

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

)	
Western Massachusetts Electric Company's)	2003 Standard Offer
Procurement of Standard Offer Service)	Solicitation
)	

**WESTERN MASSACHUSETTS ELECTRIC COMPANY'S
MOTION FOR PROTECTIVE TREATMENT**

Introduction

Western Massachusetts Electric Company ("WMECO") respectfully requests, in connection with WMECO's request to the Department of Telecommunications and Energy ("Department") for approval of WMECO's Standard Offer Service solicitation from January 1, 2003, through December 31, 2003, that the Department, pursuant to G.L. c. 164, §5D, protect, through December 31, 2003, the identity of the Standard Offer Service bidder in the contract WMECO and very limited other commercially sensitive terms. The winning bidder has requested confidentiality and disclosure of its identity and other terms could harm its competitive position and adversely impact Massachusetts' electric customers.

Pursuant to Department practice, an unredacted version of the contract is provided to the Department separately in a sealed envelope. The redacted contract is submitted as an attachment to WMECO's filing submitted today.

Argument

I. THE DEPARTMENT HAS THE AUTHORITY TO PROTECT COMPETITIVELY SENSITIVE INFORMATION.

G.L. c. 25 §5D states:

[T]he department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.

The Department has held that c. 25 § 5D establishes a three-part standard for determining “whether, and to what extent, information filed...may be protected from public disclosure.” The three parts are:

1. whether the information constitutes, *inter alia*, confidential or competitively sensitive information;
2. whether the party seeking protection can overcome the presumption that all such information is public by “proving” the need for non-disclosure; and
3. even where parts 1 and 2 are satisfied, the Department will only protect so much of the information as necessary to meet the established need
...

D.T.E. 99-56. WMECO can establish each of these requirements with respect to the information for which it seeks protection here.

II. THE INTEREST OF RATEPAYERS IN OBTAINING REASONABLY PRICED STANDARD OFFER SERVICE IS PROTECTED BY MAINTAINING THE CONFIDENTIALITY OF THE WINNING BIDDER AND OTHER SENSITIVE TERMS.

A. The Bidders' Identity and Other Sensitive Terms Constitute Confidential Information For Which Protection Should Be Afforded, Because Its Disclosure Would Materially Damage Future Solicitations.

The identity of a bidder making a successful bid to supply power in a competitive represents the quintessential type of market sensitive information for which c. 25 § 5D contemplates protection. The name of the bidder, along with credit/security assurances and specific prices for parts of the standard offer load, tell the world how the bidder views the competitive marketplace, may make it difficult for the bidder to “lock-up” the supply for which it has bid at a reasonable price, and tells competitors how they may successfully compete against the winning bidder in subsequent solicitations. In other words, it tells the party's competitors what the party believes the market price of energy will be and discloses the winning bidders market strategy. Armed with this information, any party would have an unfair advantage over the winning bidder. The obligation to keep the information confidential was part of the understanding explicit in the consummation of the Standard Offer Service contract.

B. Disclosure Of This Information Would Chill Future Negotiations, Thus Putting Customers At Risk.

In this instance, WMECO has made public all the relevant terms in the contract between WMECO and the winning party. Confidentiality is sought for only a minimal amount of

material – the identity of the winning bidder, credit/security terms, and specific bids for certain portions of the load. Confidentiality for these terms is sought by the winning bidder.

Confidentiality of the bidder's identity and the other terms is in the ratepayers' interest because if a bidder believes that its bid will become public it may not participate to supply Standard Offer Service. It may not participate because public disclosure of its bid may provide commercially sensitive information to competitors that will harm the bidder in future solicitations. This will harm all Massachusetts electric customers because, if a bidder chooses not to participate because of regulatory obstacles, the winning price may be higher, thus causing customers to pay more than otherwise would be the case. Obviously, here, if the winning bidder did not participate, cost to customers for Standard Offer Service would have been increased. In addition, in a thin market, the loss of even one serious bidder could cause customers' costs to increase significantly. The loss of additional bidders could result in even more negative results. Accordingly, WMECO has 'proven' the need for confidentiality pursuant to the second prong of the test set forth above.

C. The Department Has Already Recognized The Need To Protect Information Like That At Issue Here.

The Department has already recognized the need to protect information like that at issue here, and in fact has done so recently in *Western Massachusetts Electric Company*, D.T.E. 99-74 (2000) and *Western Massachusetts Electric Company*, D.T.E. 00-68 (see *e.g.*, Tr., November 20, 2000, p. 124). In each of these cases, the Department has determined that bid information, including the identify of bidders and the terms of bids are highly confidential.

Confidentiality has also been granted in similar cases. *See Boston Edison Company*, D.T.E. 99-16 (1999), *Western Massachusetts Electric Company*, D.T.E. 99-56 (1999), and *Massachusetts Municipal Wholesale Electric Company*, EFSB 97-4 (May 31, 2000).

Where the disclosure of information would compromise the negotiating position of a party, the Department and the Energy Facilities Siting Board have found such information to be confidential and entitled to protected treatment.

III. CONCLUSION

WHEREFORE, Western Massachusetts Electric Company respectfully requests that the Department grant this motion and thereby issue a Protective Order, for the period up to and including December 31, 2003, for the identity of the winning bidder and other sensitive terms in WMECO's Standard Offer Service solicitation, as reflected in the contract between the bidder and WMECO filed with the Department. This material should be protected from public disclosure pursuant to G.L. c. 25, 5D.

Respectfully submitted,
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ELECTRIC COMPANY

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